

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAMUEL R. NEAL-EL

Petitioner,

v.

Case No. 98-10123
Hon. Victoria A. Roberts

LUELLA BURKE, et al.

Respondents

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ORDER DENYING MOTION TO VACATE JUDGMENT

This matter is before the Court on Petitioner's Motion for "leave to vacate judgment to seek permission for qualification of relief from judgment to re-open original petition and amend fully exhausted claim to litigation."

Petitioner originally filed a petition for writ of habeas corpus on April 30, 1998. The petition was denied on September 8, 1999. The Court, while noting that it could dismiss the petition because there were both exhausted and unexhausted claims, decided the petition on the merits. [Doc. 21]. Petitioner filed an appeal to the Sixth Circuit on October 14, 1999. Prior to receiving a decision, Petitioner voluntarily dismissed his appeal on January 9, 2006.

On February 15, 2006, Petitioner filed a Motion seeking to vacate the Court's Order and amend his exhausted claims. Petitioner moves pursuant to FRCP 60(b)(1) and (6). A Motion under FRCP 60(b) is untimely. Motions pursuant to FRCP 60(b)(1) must be brought within one year after the judgment or order was entered. Motions

under 60(b)(6) must be brought within a reasonable time. This motion was filed well over six years after entry of the Order. Petitioner does not establish filing his Motion six years after entry of the judgment denying habeas relief is within a reasonable amount of time for purposes of FRCP 60(b)(6).

Additionally, aside from considerations of timeliness, Petitioner fails to establish that he is entitled to relief under FRCP 60(b). Rule 60(b) “should only be applied in extraordinary circumstances.” *Liljeberg v. Health Services Acquisition Corporation*, 486 U.S. 847, 863-864 (1988). Petitioner fails to offer evidence of an “extraordinary circumstance” entitling him to relief.

Accordingly, Petitioner’s Motion to vacate judgment is **DENIED**.

IT IS SO ORDERED.

s/Victoria A. Roberts

Victoria A. Roberts

United States District Judge

Dated: June 29, 2006

The undersigned certifies that a copy of this document was served on the Plaintiff and attorneys of record by electronic means or U.S. Mail on June 29, 2006.

s/Linda Vertriest

Deputy Clerk